



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210419-0083]

RIN 0648-BK35

Atlantic Highly Migratory Species; Federal Atlantic Tunas Regulations in Maine State Waters

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes adding Maine to the list of states for which NMFS has determined that Federal Atlantic tunas regulations are applicable within state waters. NMFS is proposing the addition after considering a request from the Maine Department of Marine Resources (MEDMR) and reviewing the state's relevant laws and regulations. Most states and territories bordering the Atlantic and Gulf of Mexico are currently included in the list, with the exception of Maine, Connecticut, and Mississippi. This proposed addition of Maine to the list would make Federal Atlantic tunas regulations--including but not limited to open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements--applicable in Maine state waters. This action would be consistent with section 9(d) of the Atlantic Tunas Convention Act (ATCA) and implementing regulations.

DATES: Written comments must be received by *[insert date 45 days after date of publication in the FEDERAL REGISTER]*. NMFS will hold a public hearing via conference call and webinar for this proposed rule on May 14, 2021, from 1 p.m. to 3

p.m. For webinar registration information, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0013, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA-NMFS-2021-0013” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS will hold a public hearing via conference call/webinar on this proposed rule. For specific location, date and time, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Carrie Soltanoff at carrie.soltanoff@noaa.gov or 301-427-8503.

NMFS invites the general public and other Federal agencies to comment on continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the following

website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number: 0648-0327 Atlantic HMS Permit Family of Forms, 0648-0328 Atlantic HMS Recreational Landings Reports, and 0648-0371 HMS Vessel Logbooks and Cost-Earnings Reports.

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff

(carrie.soltanoff@noaa.gov) or Larry Redd, Jr. (larry.redd@noaa.gov) at 301-427-8503, or Sarah McLaughlin (sarah.mclaughlin@noaa.gov) at 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas fisheries are managed under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*).

The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635.

Section 9(d) of ATCA, 16 U.S.C. 971g(d)(2), states that regulations promulgated to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply within the boundaries of any state bordering the Convention area (the Atlantic Ocean and adjacent seas) if the Secretary of Commerce, after notice and an opportunity for the State to request a formal hearing, determines that such state does not implement regulations consistent with ICCAT recommendations or if state regulations are less restrictive than the Federal regulations or are not effectively enforced. For Atlantic tunas, section 9(d) of ATCA is implemented in the Atlantic HMS regulations at 50 CFR 635.1(b). Atlantic tunas regulations in part 635 include open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements, among others. Atlantic tunas managed under the regulations in part 635 are bluefin, bigeye, albacore, yellowfin, and skipjack tunas.

Background

NMFS made initial determinations regarding the applicability of Federal regulations in state waters under section 9(d) of ATCA in 1976. NMFS determined that, while the State of Maine had enacted laws and/or promulgated regulations for the conservation and management of Atlantic bluefin tuna, those laws and/or regulations were less restrictive than Federal laws or regulations, and that certain portions of the Federal regulations would, therefore, become effective in the territorial sea adjacent to the State of Maine (41 FR 32603, August 4, 1976). This included all applicable Federal bluefin tuna regulations (then codified at 50 CFR part 285), with the exception of some purse seine regulations and retention limits.

In 1985, the scope of this provision was expanded from bluefin tuna to all ICCAT-managed Atlantic tunas (50 FR 43396, October 25, 1985). In 1999, NMFS published a proposed rule to implement the FMP for Atlantic Tunas, Swordfish, and Sharks, and Amendment 1 to the Atlantic Billfish FMP (64 FR 3154, January 20, 1999). This action discussed continued implementation and review under section 9(d) of ATCA and stated that NMFS contacted the relevant states along with Puerto Rico and the U.S. Virgin Islands to review relevant state regulations. After considering the public comment and responses from various states, the final rule for this action (64 FR 29090, May 28, 1999) codified and further implemented ATCA section 9(d) provisions at 50 CFR 635.1(b), and that language remains the same to the present day. That rulemaking did not include Maine on the list of states at § 635.1(b), either in whole or in part.

ATCA requires a continuing review of state laws and regulations and their enforcement, and § 635.1(b) accordingly states that “NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of

the specific regulations that shall or shall not apply” in state waters. NMFS publishes relevant state regulations annually in the HMS Stock Assessment and Fisheries Evaluation (SAFE) Report.

On October 5, 2020, NMFS received a letter from the MEDMR requesting that NMFS “consider a regulatory change to 50 CFR 635.1(b) that would incorporate Maine into the list of states where Federal tuna regulations are applied in state territorial waters, and that this change apply to regulations for all tuna species managed under [ATCA].” The letter further stated that “given the dynamic nature of Federal tuna management, MEDMR does not currently have sufficient resources to adjust state regulations with the frequency needed to remain consistent with Federal regulations.” MEDMR stated that it has recently seen increased commercial tuna fishing activity in Maine state waters.

This proposed rule provides a review of Maine’s regulations; provides notice of NMFS’ initial determination that Maine state regulations are not at least as restrictive as Federal regulations, taking into consideration the State of Maine’s statement that it can no longer ensure that those regulations maintain consistency with Federal regulations; and proposes adding Maine to the list of states at § 635.1(b) for which NMFS has determined that Federal Atlantic tunas regulations under 50 CFR part 635 are applicable within state waters. The State of Maine has not requested a formal hearing for this action. Most states and territories bordering the Atlantic and Gulf of Mexico are currently included in the list at § 635.1(b), with the exception of Maine, Connecticut, and Mississippi. This proposed addition to § 635.1(b) would make Federal Atlantic tunas regulations applicable in Maine state waters.

NMFS has conducted a preliminary review of Maine marine resource laws and regulations regarding tuna fishing in state waters and determined that proposed application of Federal regulations in state waters is warranted, consistent with the State’s request and the ATCA criteria, particularly given the State’s communication that it can

no longer ensure that state regulations are consistent with the Federal regulations on an ongoing basis. Federal tunas regulations at 50 CFR part 635 include, but are not limited to, open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements. The current Maine regulations do not address tuna fishing in state waters in detail, other than restricting permitted gears to harpoon and hook and line (12 Maine Revised Statutes Annotated (MSRA) § 6551) and implementing a nonresident special tuna permit for participation in certain tuna tournaments (§ 6502). Under Maine law, anyone who wants to fish commercially for tunas in state waters needs a commercial fishing license (§ 6501). MEDMR policy, although not codified, is that recreational tuna fishermen in state waters need to obtain Federal permits and follow Federal regulations. Thus, the Maine regulations appear to be less restrictive than the relevant Federal regulations.

Federal HMS Angling and Charter/Headboat category permit holders already must adhere to Federal HMS regulations as a condition of their permit (see 50 CFR 635.4(a)(10)). Based on available data on commercial catch of tunas within Maine's boundaries and surrounding waters, it appears that tuna catch within the boundaries of the state comes from fishermen who already possess Federal permits and are adhering to Federal reporting requirements for all catch as well as other Federal tuna regulations, whether they are in Federal or state waters. Furthermore, the large majority of tunas landed in Maine have historically been caught in Federal waters, with bluefin tuna being the primary species. Essential fish habitat for adult Atlantic tunas, as described in Amendment 10 to the 2006 Consolidated Atlantic HMS FMP, supports the observation that typically only bluefin tuna are found as far north as Maine. The northern extent of essential fish habitat for adult bluefin tuna is described as offshore and coastal regions of the Gulf of Maine, the mid-coast of Maine to Massachusetts, and on Georges Bank.

Although bluefin tuna can occasionally be found in coastal waters, they are most abundant in pelagic habitat.

These factors indicate that this action would not result in a substantial change in fishing location, timing, effort, authorized gear types, or harvest levels. NMFS does not anticipate a substantial change to the ecological or socioeconomic impacts on Atlantic tunas fisheries, or a significant economic impact on a substantial number of small entities.

The rule would, however, require adherence to Federal tunas regulations in Maine state waters. If finalized, this rule would provide regulatory consistency; enhance enforcement of season closures, retention limits, size limits, and other Federal regulations in Maine state waters; and address the State of Maine's observation of increased commercial tuna fishing activity in state waters. This change also would more directly ensure that any tunas landed in state waters are reported in compliance with regulations implementing ICCAT requirements.

In the future, consistent with the continuing review required by ATCA, NMFS may more formally review Connecticut and Mississippi state tunas regulations to determine if these states should also be included under § 635.1(b). NMFS may also review regulations for other HMS promulgated to implement ICCAT recommendations for all Atlantic, Gulf of Mexico, and Caribbean states and territories to determine if their regulations are at least as restrictive as the Federal regulations. NMFS requests public comment on possible initiation of these future reviews. Currently, Federal HMS regulations concerning swordfish, billfish, and sharks do not apply in state waters as a condition of Federal HMS Atlantic Tunas permits.

Request for Comments

Comments on this proposed rule may be submitted via www.regulations.gov or at a public conference call/webinar. NMFS solicits comments on this proposed rule by

[insert date 45 days after date of publication in the *FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold a conference call/webinar for this proposed rule. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Soltanoff at *carrie.soltanoff@noaa.gov* or 301-427-8503, at least 7 days prior to the meeting.

The webinar/conference call will take place on May 14, 2021. Information for registering and accessing the webinars can be found at *<https://www.fisheries.noaa.gov/action/proposed-rule-implement-federal-atlantic-tunas-regulations-maine-state-waters>*.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to structure the meeting so that all the attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do they may not be allowed to speak during the conference call.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule does not contain a change to a collection of information

requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648-0327 Atlantic HMS Permit Family of Forms, 0648-0328 Atlantic HMS Recreational Landings Reports, and 0648-0371 HMS Vessel Logbooks and Cost-Earnings Reports.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would add Maine to the list of states at 50 CFR 635.1(b) for which NMFS has determined that Federal Atlantic tunas regulations under 50 CFR part 635 are applicable within state waters. Federal Atlantic tunas regulations, which include open and closed seasons, retention limits, size limits, authorized gears and gear restrictions, and permitting and reporting requirements, among others, currently apply in all but three states bordering the Atlantic Ocean (including the Gulf of Mexico). This addition to the list of states was requested by the MEDMR and further evaluated. ATCA requires the Secretary of Commerce to undertake a continuing review of state laws and regulations pertaining to species managed under ATCA, of all states bordering the Atlantic Ocean and the extent to which such laws and regulations are enforced, as implemented in the Atlantic HMS regulations at § 635.1(b).

Of the managed Atlantic tunas (bluefin, bigeye, albacore, yellowfin, and skipjack), typically only bluefin tuna is found as far north as Maine state waters. Therefore, the economic analyses for this action focus on the bluefin tuna fisheries. However, all Federal tunas regulations would apply in Maine state waters following implementation of this rule.

The Small Business Administration has established size criteria for all major industry sectors in the United States, including fish harvesters. A business involved in

finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$19.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The Small Business Administration issued a final interim rule that adjusted the size standard for inflation from \$7.5 million to \$8 million for business classified under NAICS 487210 scenic and sightseeing transportation in water, including the for-hire fishing industry, which went into effect on August 19, 2019.

The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues for the Atlantic bluefin tuna fishery. The 2019 average ex-vessel price per pound for bluefin tuna in the North Atlantic was \$5.61, while the highest regional bluefin tuna ex-vessel price per pound (in the mid-Atlantic) was \$5.94. Current total commercial bluefin tuna quotas (including the Reserve category) are 2,238,706 pounds (1,015 metric tons). Therefore, the highest total potential revenue for the entire commercial Atlantic bluefin tuna fishery is \$13.3 million. The 2019 total ex-vessel annual revenue for the bluefin tuna fishery was \$9.8 million, while total Atlantic tunas ex-vessel annual revenue was \$22.9 million. Since a small business is defined as having annual receipts not in excess of \$19.0 million, and total potential bluefin tuna revenue for the entire fishery is \$13.3 million, each individual bluefin tuna fishing entity would fall within the small business definition.

The numbers of relevant, annual Atlantic Tunas or Atlantic HMS vessel permits based in Maine, as of October 2020, are as follows: 565 Atlantic Tunas General category permits; 12 Atlantic Tunas Harpoon category permits; two Atlantic Tunas Trap category permits; four Atlantic Tunas Longline category permits; zero Atlantic Tunas Purse Seine category permits; and 127 HMS Charter/Headboat category permits. For this action, NMFS regards all HMS for-hire vessels (those vessels that have an HMS

Charter/Headboat category permit) as small businesses, while Atlantic HMS Angling vessels fish recreationally only and are therefore not considered small entities for purposes of the Regulatory Flexibility Act (RFA).

This proposed rule would expand Federal Atlantic tunas regulations into Maine state waters. Federal HMS Charter/Headboat category permit holders already must adhere to Federal HMS regulations as a condition of their permit (see 50 CFR 635.4(a)(10)). Based on available data on commercial catch of tunas in Maine and surrounding waters, it appears that tuna catch in the state comes from fishermen who already possess Federal permits and are adhering to Federal reporting requirements for all catch as well as other Federal tuna regulations, whether they are in Federal or state waters. In addition, available catch and dealer data, bluefin tuna habitat, and typical tuna fishing practices indicate that the majority of tunas landed in Maine have historically been caught in Federal waters. Given these factors, this action practically would not have an effect on the regulations that tuna fishermen based in Maine currently follow. Furthermore, this action is not expected to affect the amount of bluefin tuna caught and sold or result in any change in the ex-vessel revenues those fishermen could expect. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS invites comment from the public on the information in this certification and the determination that the impact on entities affected by the proposed rule will not be significant.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,

Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 20, 2021.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.1, revise paragraph (b) to read as follows:

§ 635.1 Purpose and scope.

* * * * *

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish, or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case,

NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

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